

RONETTE THORNTON
Claimant

WILDWOOD OUTDOOR EDUCATION CENTER
Respondent

HAWKEYE SECURITY INSURANCE
Insurance Carrier

This matter was originally presented to Judge Foerschler on July 31, 2003, at preliminary hearing, at which time written claim was the only issue in dispute. Both the

Administrative Law Judge and the Board found that claimant had provided timely written claim pursuant to the requirements of the statute. Respondent again raises the issue after presenting the testimony of Maria Elena Leal, a case manager and registered nurse involved in claimant's claim. Respondent contends that one of the documents that claimant allegedly provided was not available from respondent and, therefore, could not have been provided by claimant to satisfy the requirements of the written claim statute.

In order to receive workers' compensation benefits, a claimant must serve written claim for compensation upon the employer within 200 days after the date of accident.¹ At the original preliminary hearing, held July 31, 2003,² claimant placed into evidence what was marked as Claimant's Exhibit 4 and described as a note titled "To Whom It May Concern," written and signed by claimant, dated September 20, 2001. It describes the incident wherein claimant was kicked in the knee and discusses the fact that she was provided an Ace bandage.

At the time of that preliminary hearing, respondent provided the testimony of Robin Cooper Cornejo, a co-executive director with respondent's Wildwood facility. Ms. Cornejo was questioned as follows regarding Claimant's Exhibit 4.

- Q. (By Mr. Phalen) Let me show you what I have marked as Claimant's Exhibit 4. Is that a document that was contained in your file?
- A. Yes, sir.
- Q. Is that a handwritten document signed by Ms. Thornton?
- A. Yes.
- Q. Is it dated September 20, 2001?
- A. Yes, sir.
- Q. Does it describe the work injury that she underwent, that she suffered?
- A. What she alleges, yes.
- Q. On September 14th, 2001?
- A. Yes.

¹ K.S.A. 44-520a.

² A second preliminary hearing (motion hearing) was held on January 29, 2004.

Q. And you had her sign this? You had her prepare this?

A. Yes.

Q. And she had to do that in order to get the work comp medical treatment that Mr. Ingham provided, true?

A. Yes, so we could file a report.³

The Kansas Supreme Court has stated that the purpose for written claim is to enable the employer to know about the injury in time to investigate it.⁴ The same purpose or function has been described to the requirement for notice found in K.S.A. 44-520a.⁵ Written claim is, however, one step beyond notice in that an intent to ask the employer to pay compensation is required. The Kansas Supreme Court has described the test as follows:

In determining whether or not a written instrument is in fact a claim the court will examine the writing itself and all the surrounding facts and circumstances, and after considering all these things, place a reasonable interpretation upon them to determine what the parties had in mind. The question is, did the employee have in mind compensation for his injury when the instrument was signed by him or on his behalf, and did he intend by it to ask his employer to pay compensation?⁶

In this instance, claimant submitted Claimant's Exhibit 4, a handwritten statement describing the incident, at the request of Ms. Cornejo. Ms. Cornejo acknowledged that the handwritten document, which was presented to her, had to be prepared in order for claimant to obtain workers' compensation medical treatment.

The Board concludes that Claimant's Exhibit 4, from the July 31, 2003 preliminary hearing, satisfies the requirements of K.S.A. 44-520a.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Decision of Administrative Law Judge Robert H. Foerschler dated February 9, 2004, should be, and is hereby, affirmed.

³ P.H. Trans. (July 31, 2003) at 35.

⁴ *Craig v. Electrolux Corporation*, 212 Kan. 75, 510 P.2d 138 (1973).

⁵ *Pike v. Gas Service Co.*, 223 Kan. 408, 573 P.2d 1055 (1978).

⁶ *Fitzwater v. Boeing Airplane Co.*, 181 Kan. 158, 309 P.2d 681 (1957).

IT IS SO ORDERED.

Dated this ____ day of April 2004.

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent
Robert H. Foerschler, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director